IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION ST.NO.20288 OF 2007
IN
CIVIL REVISION APPLICATION NO.173 OF 2007

M/s.Bharat Petroleum Corporation ...Petitioner

vs.

Sunil NIranjan Jhaveri ...Respondent

Mr.N.V.Walawalkar, Sr.Advocate with Mr.S.R.Page for the Petitioner
Mr.P.K.Dhakephalkar, Sr.Advocate i/b Mr.Y.M.Chaudhari for the Respondent

CORAM: A.S.OKA,J.
DATE : OCTOBER 15, 2007.

P.C.:

1. Heard learned senior counsel for the parties. The Revision Applicant has filed this Review Petition for review of the Judgment and Order dated 4th May 2007 passed by this court in the Civil Revision Application. With a view to appreciate the submissions made by the learned counsel for the parties it will be necessary to refer to the facts of the case in brief :

2. By an indenture of lease dated 11th February 1964 executed by the grandfather of the Respondent, a lease in respect of the suit premises consisting of flat Nos. 3 and 4 on the first floor and flat No.6 on the second floor of the building known as Jhaveri Mansion, Malbar Hill, Mumbai along with two servants' quarters and sheltered place for parking three cars was granted in favour of the Burmah Shell Oil Storage and

Distributing Company of India Ltd. According to the case of the Respondent, the lease was for a period of 10 years commencing from 1st January 1964 and ending on 31st December 1973. The said lease contains a clause for renewal. The Respondent is the grandson of the original lessor/landlord who claims to have become the owner and landlord on the basis of the Will executed by the original landlord.

3. By virtue of the provisions of the Burmah Shell (Acquisition of Undertaking in India) Act,1976, the right, title and interest of M/s.Burmah Shell Oil Storage and Distributing Company of India Ltd. stood transferred to and vested in Union of India on 24th January 1976. On the same day on which the right, title and interest of the company stood transferred and vested in Union of India, a notification was issued by Union of India under section 7 of the said Act of 1976. On 2nd February 1976 a fresh certificate of incorporation was issued effecting the change of the name of the Government Company from M/s.Burmah Shell Oil Storage and Distributing Company of India Ltd. to that of M/s.Burmah Shell Refineries Ltd. On 12th February 1976, the name of Burmah Shell Refineries Ltd. was changed to Bharat Refineries Ltd. On 1st August 1977, the name of Bharat Refineries Ltd was changed to Bharat Petroleum Corporation Ltd. which is the Review Petitioner.

4. The suit was filed by the Respondent in the court of Small

Causes at Mumbai on the basis of a notice of determination of tenancy under section 106 of the Transfer of Property Act,1882. The suit was based on the contention that after coming into force the Maharashtra Rent Control Act,1999 with effect from 31st March 2000, the Review Petitioner ceased to have the protection of the said Act by virtue of section 3 of the said Act of 1999. The suit was contested by the Petitioner by raising various contentions. The suit was decreed by the learned Judge of the Court of Small Causes by passing a decree for possession against the Petitioner. An Appeal was preferred by the Petitioner before the Appeal Bench of the Court of Small Causes. The said appeal was dismissed. Being aggrieved by the decree of eviction, the Review Petitioner preferred the Revision Application. By the Judgment and Order dated 4th May 2007, the Revision Application was rejected by this court. A Special Leave Petition was preferred by the Petitioner in the Apex Court for challenging the said decision of this court. On 27th August 2007, the Apex Court permitted the Petitioner to withdraw the Special Leave Petition with a liberty to the Petitioner to apply for recall/review of the order passed by this Court. Accordingly, the present Review Petition has been preferred by the Review Petitioner. The review is sought mainly on two grounds.

5. The first ground urged by the learned Senior Counsel for the Petitioner is that the acquisition proceedings in respect

of the larger property comprising of the suit premises have been initiated by Maharashtra Housing and Area Development Authority and in view of pendency of the said acquisition proceeding, decree of eviction could not have been passed. The second submission of the learned counsel for the Petitioner is based on a decision of the Division bench of this Court dated 20th December 2006 in First Appeal No.1245 of 2004 (Smt.Leela Pansare Vs. Oriental Insurance Company Ltd.and others).

6. The learned Senior Counsel for the Review Petitioner submitted that the Petitioner Company is a Government Company. He submitted that in view of the decision of Division Bench of this Court in case of Smt.Leela Pansare (supra), the Petitioner-company being a Government company will continue to have protection of the said Act of 1999. He invited my attention to section 3 of the said Act of 1999 and in particular clause (b) of sub section 1 of section 3. He invited my attention to aforesaid decision of the Division Bench of this Court and in particular paragraph 28, 29 and 30 thereof and submitted that in view of the said decision, the exemption provided under clause (b) of the sub section 1 of section 3 will not apply to the Petitioner as the petitioner is a Government company. He invited my attention to the averments made by the Petitioner in the written statement. He pointed out a specific case was made out in the written statement that the Petitioner is a Government Company. He

invited my attention to the provisions of the Burmah Shell (Acquisition of Undertaking in India) Act,1976, and in particular section 7 thereof. He pointed out that by a notification issued by the Government of India under section 7 of the said Act of 1976, the right, title and interest and liabilities of original company stood transferred and vested in Central Government company known as Burmah Shell Refineries Ltd. He has pointed out that the vesting has taken place on 27th January 1976. He submitted that the name of the said Central Government company underwent two changes on 12th February 1976 and on 1st August 1977. He pointed out that from the Judgment and Order dated 4th May 2007 passed in the Revision Application that the fact that the right, title and interest of the original lessee company vested in Government company by name Burmah Shell Refineries Ltd. has been accepted by this court. He pointed out that this court has also accepted the fact that the review Petitioner is the same as the Burmah Shell Refineries Ltd., as the name of the said Government company underwent a change in the year 1976 and 1977. He, therefore, submitted that the fact that the Petitioner is the Government Company is accepted by this court while deciding the review Application and therefore, the decision of the Division Bench in case of Smt.Leela Pansare (supra) will squarely apply to the case of the Petitioner. He pointed out that the courts below have proceeded on erroneous assumption that the Petitioner is not protected by the provisions of the said Act of 1999. He submitted that in view

of aforesaid decision of the Division Bench, protection of the said Act of 1999 is very much available to the Petitioner and therefore, the suit filed by the Respondent was not maintainable as the suit proceeds on an assumption that the Petitioner is not protected by the said Act of 1999. He placed reliance on various decisions of the Apex Court in support of the Review Petition. He submitted that this is a fit case for exercising power under Order XLVII Rule 1 of the Code of Civil Procedure,1908.

7. I have carefully considered the submissions. It will be necessary to refer to the relevant provisions of the said Act of 1999. Sub section 1 of section 3 of the said Act of 1999 provides that the said Act of 1999 will not apply to the categories of premises mentioned in clauses (a) and (b) thereof. Perusal of the averments made in the plaint by the Respondent shows that the Respondent relied upon clause (b) of sub section 1 of section 3 of the said Act of 1999 which reads thus :

"3 (1) This Act shall not apply-

(a) to any premises belonging to the Government or a local authority or apply as against the government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises

taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more."

In paragraph 5 of the plaint, the Respondent has asserted that the Petitioner is not entitled to protection of the said Act of 1999, since the Petitioner is a company having a paid up share capital of more than Rupees one crore. In the written statement filed by the Petitioner and in particular paragraph 6 it is admitted that the Petitioner is a large company with a paid up share capital of more than one crore. However, it is specifically asserted that the Petitioner is a Government company wherein the Government of India is holding 51% shares. It is therefore submitted that in view of what is held by the

Division Bench in the case of Smt.Leelabai Pansare (supra) the Petitioner continues to have protection of the said Act of 1999 as the Petitioner is a Government Company. In the affidavit in lieu of evidence of the Respondent, it is stated that Burmah Shell Oil Storage and Distributing Company Ltd. is now known as Bharat Petroleum Company Ltd.. One of the submissions of the learned Senior Counsel for the Petitioner is that in the written statement the Petitioner specifically asserted that it is a Government Company which fact is not controverted by the Respondent even in the Affidavit of examination in chief.

8. I have perused the affidavit in lieu of examination in chief of the Respondent as well as his additional affidavit and cross examination of the said witness made by the Advocate for the Petitioner. I find that no suggestion has been given to the Respondent that the Petitioner was a Government Company and continued to be a Government Company till the date of institution of the suit. It must be noted here that the Respondent had come to the court with a specific case that the suit premises was covered by clause (b) of sub section 1 of section 3 of the said Act of 1999 as the Petitioner-company was having paid up share capital of Rupees 1 crore and more. The fact that the Petitioner company was having a paid up share capital of Rs.1 crore and more was specifically admitted in the written statement by the Petitioner. It was the case of the Petitioner that the Petitioner being a Government

Company, the exemption will not apply. Even assuming that in the year 1976, assets of the original lessee company vested in the Government Company and the name of the said Government company was changed in the year 1977 to the present Petitioner, the question is whether on the date of institution of the suit, the Petitioner continued to be a Government company. I have also perused an Affidavit in lieu of examination in chief of the witness examined by the Petitioner Mr.Anil Y. Jadhav. He has merely stated that the Petitioner is a successor in title of the said Burmah Shell Oil Storage and Distributing Company Ltd. He has, however, not stated that on the date of institution of the suit, the petitioner was a Government Company. He has not even stated that the Petitioner is a Government Company.

9. The review of the Judgment of this court is sought on the ground of the decision of the Division Bench of this court in case of Smt.Leela Pansare (supra). Assuming that this court is entitled to review its Judgment on the basis of the said decision of the Division Bench, the said decision of the Division Bench will have application provided the evidence was led by the Petitioner to show that on the date of institution of the suit the Petitioner was a Government Company. As stated earlier, even a suggestion was not given to the Respondent in his cross examination that the Petitioner was a Government Company. The Petitioner has not led any evidence to that effect. Therefore, the decision of the Division Bench

in case of Smt.Leela Pansare (supra) will have no application to the facts of the case in hand. As stated earlier, it is an admitted position that the petitioner was having paid up share capital of more than one crore and therefore, exemption granted by clause (b) of sub section 1 of section 3 of the said Act of 1999 is applicable to the suit premises. In my view, the decision of the Division Bench will not apply to the facts of the present case as there is no factual foundation in evidence for applying the decision to the facts of the case. Therefore, I am not dealing with the various decisions cited by the learned senior counsel for the Review Petitioner on the power of this court to review its own Judgment and Order.

10. So far as other contention is concerned, it is an admitted position that the acquisition proceeding have not attained finality and the Respondent has not been divested of his right, title interest in the suit premises. Therefore, mere pendency of acquisition proceedings is no ground to review the Judgment and Order passed in the Revision Application. Hence, there is no merit in the Review Petition and the same is accordingly dismissed.

11. The learned senior counsel for the Petitioner prays that the decree for possession be stayed for a period of 12 weeks. The said prayer is opposed by the counsel appearing for the Respondent. Considering the fact that even the Apex Court has granted protection to the Petitioner while passing the order

dated 27th August 2007, decree for possession shall not be executed for a period of eight weeks from today.

JUDGE